

## Imâm Al-Qurtabî's Commentary on the Âyah of Al-Qisâs

“The Almighty’s saying: ﴿ There will be retaliation in the sacred (months) for an offence (in a sacred month), and all violations will bring about retaliation. So, if anyone attacks you, retaliate in the same manner. (But) be mindful of Allâh, and know that Allâh is with those mindful (of Him). ﴾ [Al-Baqarah, 194]’

“There are ten matters within it:

**“The first:** His, the Most High’s saying: ﴿ ...the sacred month... ﴾ The derivation of the month has already been mentioned (previously), and the reason for its revelation is what was narrated on the authority of Ibn ‘Abbâs, Qatâdah Mujâhid, Miqsam, As-Suddî, Ar-Rabi’, Adh-Dahhâk and others. They said: ‘It was revealed in the ‘Umrah of (the month of) Al-Qadhiyyah during the year of (the event of) Al-Hudaybiyyah. And that is because the Messenger of Allâh ﷺ went out to perform ‘Umrah until he reached Al-Hudaybiyyah in (the month of) Dhul-Qa’dah in the year six (Hijrî), but the Mushrikîn, the Kuffâr of Quraysh, repelled him from the House (i.e. the Ka’bah), so he left. But Allâh, the Glorified be He, promised him that he would enter it, so he entered it in the year seven (Hijrî) and he completed his ritual (of ‘Umrah), then this verse was revealed. And it was narrated on the authority of Al-Hasan that the Mushrikîn said to the Prophet ﷺ: ‘O Muhammad, haven’t you been forbidden from fighting during the sacred month?’ He said: ‘Yes.’ So they wanted to fight him, but then this verse was revealed (thus preventing their advantage). The meaning is: If they permit it, then fight them (back), so through this Âyah, Allâh permitted them (i.e. the Muslims) to defend against them (i.e. Quraysh). The first saying is more famous, and it is held by the majority.’

**“The second:** His the Most High’s saying: ﴿ There will be retaliation in a sacred (months) for an offence... ﴾ And ﴿ ...the sacred (الحرام)... ﴾ is the plural form of “Hurmah (singular),” in the same way “Thulumât (oppressions)” is the plural of “Thulmah (singular),” and the “Hujurât (chambers)” is the plural of “Hujrah (singular).” However, here the ﴿ ...the sacred (الحرام)... ﴾ was pluralized, because He referred to the sacredness of the sacred months, the sacredness of the sacred land, and the sacredness of the (state of) Ihrâm (i.e the ritualistic sanctity of ‘Umrah itself). ‘Sanctity’ – meaning what you were prevented from violating, and ‘retaliation’ – meaning equal retribution. Therefore, the meaning is: I permitted retaliation for you against them for their repelling you (from ‘Umrah) in the year six (Hijrî), then you completed the ‘Umrah in the year seven (Hijrî). And according to this meaning “and all violations will bring about retaliation”, is connected to what came before it, and was based upon that. (Alternatively), it has been said: (Rather) it (i.e. the second sentence of the verse) is separate from that (the first sentence), and instead it is the implementation of a command that existed at the very beginning of Islâm (which was): Whoever violates your sanctity, you take from them in the same way he oppressed you, but then that was abrogated by (the legislated permission) to fight. And another group (of commentators) said: What the verse deals with concerning transgression within the nation of Muhammad ﷺ (i.e. between the Muslims themselves), regarding violations and the like, is not abrogated. Therefore, it is permissible for someone who is transgressed against in regard to property or (inflicted) wounds to transgress in the same way as he was transgressed against, if it

is something that only he saw, and there is nothing between him and Allâh, the Most High, in that matter. This was stated by Ash-Shâfi’î and others, and it is a narration in the legal school of Mâlik. And a group of Mâlik’s companions said: ‘That (i.e. retaliation) is not his right. Rather, the matters of retaliation are left up to the authorities. And (unjustly seized) wealth is covered by his saying (صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ): ‘Return the entrusted things to the ones who entrusted you, and do not betray the one who betrays you.’’ It was narrated by Ad-Daraqutnî and others. So, whoever is entrusted by someone, who betrayed him, it is not permissible for him to betray him, in order to obtain his rights from what he entrusted to him. This is the well-known opinion of the school of thought, and it is what was stated by Abû Hanîfah; they both adhered to this Hadîth as well as His, the Most High’s saying: ﴿Allâh commands you to return trusts to their owners...﴾ [An-Nisâ, 58] And it is (also) the saying of ‘Atâ’ al-Khurasânî. Qudâmah bin al-Haytham said: ‘I questioned ‘Atâ’ bin Maysarah al-Khurasânî by asking him: ‘I have a right against a man, yet he has denied it to me, and I have no way of proving it. Should I take retaliation from his money?’ He said: ‘What do you think if he had intercourse with your slave-girl, and you discovered this? What would you do then?’

“I say: The correct view is that this is permissible, regardless how he achieves taking his right(s), as long as he is not considered a thief. This is the legal school of Ash-Shâfi’î, and Ad-Dâwûdî narrated it (i.e. this opinion) from Mâlik. Likewise, Ibn al-Mundhir stated it, and Ibn Al-‘Arabî selected it (i.e. this opinion). And this is not betrayal, but rather it is access to a (legitimate) right. And the Messenger of Allâh (صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ) said: “*Support your brother, whether he is an oppressor or an oppressed person.*” and taking what is right from the oppressor is support for him. And he (صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ) said to Hind bint ‘Utbah, Abû Sufyân’s wife, when she said to him: ‘Abû Sufyân is a stingy man. He does not give me what is sufficient to support me and my children, except what I take from his money without his knowledge. Is there any sin on me?’ The Messenger of Allâh (صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ) said: ‘*Take what is sufficient for you and your child, in a reasonable manner.*’ So he permitted her to take and not to take except the amount that is required of her, and all of this is proven in the Sahîh (Hadîth collections). The Most High’s saying: ﴿So, if anyone attacks you, retaliate in the same manner﴾ is decisive in the matter of disagreement.

**“The third:** They disagreed about the situation where the oppressed one recovers valuables (from the one who stole from him) of a different type than what was taken from him, so it was said: ‘He should not take it (i.e. the different valuables), except according to the verdict of the authorities. Ash-Shâfi’î has two opinions (attributed to him), the most correct of which is taking (it), by analogy upon if he were to obtain wealth from the same category of his wealth. The second opinion is that he should not take it because it is a different category. And among them are those who said: ‘He should calculate the value of what he has upon him and then take that value.’’ And this is the correct view, based on the evidence we have shown, and Allâh knows best.’

**“The fourth:** If we assume that (it is allowed) to take, then should what is upon him from debt be considered and other matters? Ash-Shâfi’î said, “No. Rather he takes (only) what he is owed.” And Mâlik said, “What is considered is what is allotted to him along with other creditors in debt, and this is (based on) *qiyyâs*.” And Allâh knows best.

**“The fifth:** The Most High’s saying: ﴿So, if anyone attacks you, retaliate in the same manner.﴾ Is a generality that is agreed upon (i.e. that he may retaliate) physically himself, if possible, or through the authorities. And the people differed as to whether the recompense is called aggression or not. Whoever said: There is no metaphor in the Qur’ân, said: Encounter is aggression, and it is permissible aggression. Just as the metaphor in Arab speech is a permissible lie. Because the saying of the one who said: ‘The eyes said to him, ‘Hear and obey,’ and also: ‘The basin filled up and said, ‘That is enough,’ and also: “My camel complained to me about the length of the journey,’ and it is known that these things cannot speak. The definition of lying is: reporting about a thing in a way that is contrary to what it is. And those who say that there are metaphors in the Qur’ân call this as a metaphor and contrasting speech with its like, as Amr bin Kulthum said: No one should deal with us ignorantly, or we deal ignorantly more than the ignorance of the ignorant. The other said: ‘I have a horse for forbearance, and with forbearance it is bridled, and I have a horse for ignorance, and with ignorance it is saddled. Whoever tries to straighten me, I am straight, and whoever tries to bend me, I am crooked. He meant: I compensate with equality the ignorant and the crooked, not that he was praised for his ignorance and crookedness.’

**The sixth:** The scholars differed regarding one who consumes or destroys an animal or goods that cannot be measured or weighed. Ash-Shafi’i, Abu Hanifah, their companions, and a group of scholars said: He owes the like (of what was destroyed), and it should not be switched to (merely) the value except when there is no likeness (that can be provided), due to the Most High’s saying: ﴿Whoever commits aggression against you, then transgress against him﴾ in the same way as he transgressed against you.” And Allah the Most High’s statement: And if you punish, then punish in the same way as you were punished. They said: This is general in all things, and they supported this by saying that the Prophet, ﷺ, kept the broken bowl in the house of the one who broke it and sent the unbroken one (to the one whose bowl was broken), and said: “A vessel for a vessel and food for food.” It was narrated by Abu Dawud, who said: Musaddad narrated to us, Yahya narrated to us, Hā’. <sup>1</sup> And Muhammad bin Al-Muthanna narrated to us, Khalid narrated to us, on the authority of Humayd on the authority of Anas that the Messenger of Allah, ﷺ, was with some of his wives, so one of the mothers of the believers sent with a servant a bowl containing food. He said: She struck her hand and broke the bowl. Ibn Al-Muthanna said: So, the Prophet, ﷺ, took the two pieces, joined them to the other, and began to collect the food in them and said: ‘Your mother has become jealous.’ Ibn Al-Muthanna added “Eat”, so they ate until her bowl which was in her house arrived.” Then we returned to the wording of the Hadith of Musaddad and he said: “Eat.” He then detained the messenger and the bowl until they were finished. then he gave the unbroken bowl to the messenger and kept the broken bowl in his house. Abu Dawud narrated to us, saying: Musaddad narrated to us, Yahya narrated to us, on the authority of Sufyan, who said, and he narrated to us, Fulayt Al-Amiri - Abu Dawud said: And he is Aflat bin Khalifa - on the authority of Jasrah bint Dajājah, who said: Ai’shah, may Allah be pleased with her, said: I never saw someone make food like Safiyyah She made food for the Messenger of Allah, ﷺ, Then sent

<sup>1</sup> Muhaddithin would use the symbol Ha’ to separate partial chains of narration in a Hadith

it (to my home) I was overcome by shuddering, so I broke the vessel. So, I said: O Messenger of Allah, what is the atonement for what I did?" He said: "A vessel like a vessel and a food like a food." Malik and his companions said: In the case of animals and unmeasureable and unweigheable goods, he must pay the value, not the likeness, as evidenced by the fact that the Prophet, *صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ*, judged for the one who freed half of his slave that he pay the other half of the value to his partner, and did not judge that he receive the likeness of half of his slave. There is no disagreement among scholars regarding the repayment in likeness in foods, drinks, and weightable items, based on his saying, peace be upon him: "A food for a food."

**"The seventh:** There is no disagreement among scholars that this verse is the basis for the similarity in retaliation. So, whoever kills with something is killed with what he killed with, and this is the opinion of the majority, unless it kills him due to immorality such as sodomy or providing alcohol, in which case he is killed by the sword. The Shafi'i's have an opinion: He is killed by that, so a stick is fashioned in that description, and he is stabbed in the anus until he dies, and he is given water to drink in place of the wine until he dies. Ibn Al-Majashun said: Whoever is killed by fire or poison will not be killed by it, based on the saying of the Prophet, *صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ*: "No one punishes with fire except Allah." And poison is an internal fire. And the majority are of the view that he is killed by that, due to the generality of the verse.'

**"The eighth:** As for retaliation with a stick, Malik said in one of the two narrations: If there is prolongation and torture in killing with a stick, he is killed with the sword. Ibn Wahb narrated it from him, and Ibn al-Qasim said it. And in the other (narration): He is to be killed with it, even if that is involved. And this is the opinion of Ash-Shafi'i. And Ashhab and Ibn Nafi' narrated from Malik regarding the stone and the stick is that he is killed with them if the blow is tidy, but if he is struck numerous times, then no. And accordingly, he should not be shot with arrows or (struck with) stones because it is torture. And Abd al-Malik said this. Ibn al-Arabi said: "The correct statement of our scholars is that retaliation in kind is obligatory, unless it falls within the limits of torture, then it should be left to the sword." Our scholars have agreed that if he cuts off his hand and leg and gouges out his eye with the intention of torture, that will be done to him, as the Prophet, *صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ*, did to the killers of the shepherds. But if it was in defense or competition, he is killed with the sword. A group disagreed with all of this and said: There is no retaliation except by the sword, and it is the Mathhab of Abu Hanifah, Ash-Sha'bi and An-Nakha'i. They used as evidence for this what was narrated on the authority of the Prophet, *صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ*, who said: There is no retaliation except with a piece of iron." And (they used) the prohibition of mutilation, and his saying: No one punishes with fire except the Lord of Fire. What is correct is what the majority said, due to what the Imams narrated on the authority of Anas bin Malik that a slave girl found her head injured between two stones, so they asked her: Who did this to you? Was it so and so? Was it so and so? Until they mentioned a Jew, so she nodded her head. Then the Jew was taken and he conceded, so the Messenger of Allah, *صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ*, commanded that his head be crushed with stones. And in a narration: So, the Messenger of Allah, *صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ*, killed him between two stones. This is a clear, authentic text, and it is the meaning of His, The Most High's saying: And if you punish, then punish with the likes of what you were punished with. And His saying: Then transgress against him in the same way as he has

transgressed against you." As for what they used as evidence from the hadith of Jabir, it is a weak hadith according to the hadith scholars. It is not narrated through an authentic path. If it were authentic, we would say according to it, and that if he kills with a piece of iron, he would be killed with it. That is indicated by the hadith of Anas: that a Jew crushed the head of a slave girl between two stones, so the Messenger of Allah, صلی الله علیہ وسلم, crushed his head between two stones. As for the prohibition of mutilation, we also say that it applies if he does not mutilate. But if he mutilates, we mutilate him. This is indicated by the hadith of the Arnayyin, and it is authentic; it was reported by the Imams. And his saying: "No one is tormented with fire except the Lord of Fire" is correct as long as he does not burn. But if he burned he is burned. This is indicated by the generality of the Qur'an. Ash-Shafi'i said: If he threw him into the fire intentionally, he throws him into the fire until he dies, and Al-Waqar mentioned it in his Mukhtasar from Malik, and it is the opinion of Muhammad bin Abdul-Hakam. Ibn al-Mundhir said: What many scholars say about a man strangling a man is that he must be dealt with in equal retaliation, and Muhammad ibn al-Hasan disagreed with that, saying: If he strangled him until he died, or threw him into a well and he died, or threw him from a mountain or roof and he died, then there is no Qisas upon him and his relatives are responsible for the blood money. However, if he is known for that, in that he has strangled more than one person, then he must be killed. Ibn al-Mundhir said: When the Prophet, صلی الله علیہ وسلم, retaliated in kind with the Jew who smashed the head of the slave girl with a stone, this has the same meaning, so there is no meaning to his (i.e. Muhammad ibn al-Hasan ash-Shaybani's) saying.'

"I say: This statement was narrated by others on the authority of Abu Hanifah, and he said: Abu Hanifah deviated and said regarding someone who is killed by strangulation, poison, being thrown from a mountain or into a well or by a piece of wood: He is not killed and no equal retaliation is to be taken against him, unless he killed with a piece of iron, a stone, or wood, or was known to strangle and throw people (off of things), and the blood money was due from his relatives. And this, from him, is a rejection of the Qur'an and the Sunnah, and the innovation of that which the Ummah was never upon, and a pretext for removing Qisas which Allah has legislated for the souls, so it is unavoidable.'

**"The ninth:** They disagreed about someone who imprisoned a man and another killed him. Ata' said: The killer is killed and the one who imprisoned him is imprisoned until he dies. Malik said: If he imprisoned him while he believed he wanted to kill him, then they should both be killed. According to Ash-Shafi'i, Abu Thawr, and An-Nu'man, the one who imprisoned (him) is punished, and Ibn Al-Mundhir chose it.'

I say: Ata's statement is correct, and it is what is necessitated by the revelation. And Ad-Daraqutni narrated on the authority of Ibn Umar from the Prophet, صلی الله علیہ وسلم, who said: If a man captures a man and another kills him, the killer is to be killed and the one who captured him is to be imprisoned. It was narrated by Sufyan Ath-Thawri, on the authority of Ismail bin Umayyah, on the authority of Nafi', on the authority of Ibn Omar, and it was narrated by Ma'mar and Ibn Jurayj, on the authority of Ismail, in Mursal form.'

**“The tenth:** The Most High’s saying: “Then whoever transgresses,” transgression is to exceed. Allah the Most High said: “And whoever transgresses the limits of Allah,” in other words, transgresses them. So, whoever wrongs you, take your rights from him according to the extent of how you were wronged. And whoever insults you, respond to him with the likes of what he said. And whoever takes your honor, take his honor. Do not transgress against his parents or his son or his relative. And you do not have the right to lie about him even if he lies about you, because disobedience is not met with disobedience. So, if he says to you, for example: O kafir, it is permissible for you to say to him: You are the kafir. And if he says to you: O adulterer, then your Qisas is to say to him: O liar, O false witness. And if you said to him, “O adulterer,” you would be a liar and have sinned in lying. And if he delayed repaying you while he was rich, without excuse, and (you) said: “O oppressor, O consumer of people’s wealth.” The Prophet, ﷺ, said: “Delay in payment on the part of one who possesses the means, makes it lawful to dishonor and punish him.” As for his honor, it is what we have explained, and as for his punishment, it is prison in which he is imprisoned. Ibn Abbas said: This was revealed before Islam was strengthened, so he commanded whoever among the Muslims was harmed to be recompense with the same as what he was harmed with., or to be patient or to pardon. Then he abrogated that by saying: ﴿And fight all the polytheists...﴾ And it was said: It was abrogated by having it taken to the Sultan, and it is not permissible for anyone to take revenge on anyone except with the Sultan’s permission.”